

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF CALIFORNIA

SEAN S MAY, MD,

No C 09-1537 VRW

Plaintiff,

ORDER

v

UNUMPROVIDENT CORPORATION, THE  
PAUL REVERE LIFE INSURANCE  
COMPANY and UNUM GROUP,  
inclusive,

Defendants.

On April 8, 2009, plaintiff Sean May filed a complaint against Unumprovident Corporation, The Paul Revere Life Insurance Company and Unum Group ("defendants") alleging that defendants improperly denied and failed to reconsider plaintiff's disability insurance claims. Doc #1. The court dismissed the complaint because plaintiff's claims were not filed within the relevant statutes of limitations. Doc #30. On October 14, 2010, plaintiff filed a first amended complaint ("FAC") alleging: (1) breach of regulatory settlement agreement; (2) breach of California

1 settlement agreement; (3) breach of the covenant of good faith and  
2 fair dealing; (4) intentional infliction of emotional distress; and  
3 (5) negligent infliction of emotional distress. Doc #31.

4 Defendants move to dismiss the FAC. Doc #33. Before the  
5 court can address the merits of defendants' motion, however, the  
6 court must determine whether plaintiff has named the proper parties  
7 as defendants. Defendants argue that the FAC is deficient because  
8 plaintiff failed to name Provident Life and Accident Insurance  
9 Company ("Provident Life") as a defendant. Doc #34 at 5.

10 Plaintiff counters that he "has pled substantial facts  
11 demonstrating the 1999 merger of Provident [Life] into the Unum  
12 Group" and that "it was and is plaintiff's intention to include  
13 Provident [Life] in this litigation." Doc #35 at 26.

14 Plaintiff attaches to the FAC his insurance policies,  
15 which were issued by "Provident Life and Accident Insurance  
16 Company." Doc #31 Exhs A & B. The regulatory settlement agreement  
17 upon which plaintiff bases his claims was entered into on November  
18 18, 2004, after the alleged merger between Unum Group and Provident  
19 Life. Id Exh C. It appears that Provident Life entered the  
20 regulatory settlement agreement on its own behalf and was charged  
21 in the agreement with reassessing claims under policies it had  
22 issued. Doc #31 Exh C ¶2. The 2005 California settlement  
23 agreement incorporates the regulatory settlement agreement by  
24 reference and refers to "Unum Life Insurance Company of America,"  
25 "The Paul Revere Life Insurance Company" and "Provident Life and  
26 Accident Insurance Company" as separate entities. Id Exh D.

27 It is uncertain whether plaintiff may have erred in  
28 failing to name Provident Life as a defendant to this action.

1 Accordingly, plaintiff is ORDERED to SHOW CAUSE in writing on or  
2 before February 4, 2011 why he should not be required to amend the  
3 FAC to name and serve Provident Life as a defendant. Defendants  
4 may respond on or before February 18, 2011. Alternatively,  
5 plaintiff may choose to serve and file, on or before February 4,  
6 2011, an amendment to the FAC to name Provident Life as a  
7 defendant. The court expresses no opinion at this time whether the  
8 amendment would relate back to plaintiff's initial complaint  
9 pursuant to FRCP 15(c)(1)(C). The hearing scheduled for January 6,  
10 2011 is hereby VACATED.

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13 IT IS SO ORDERED.

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16 VAUGHN R WALKER  
17 United States District Judge  
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